

which existed when this property was sold and possession delivered to the purchaser, was that of infancy, and though her marriage may have taken place before the infancy terminated, (of which however there is no evidence,) still as successive or cumulative disabilities are not allowed to interfere with the running of the statute, the ten years given to an infant must be computed from the termination of her infancy, as has been decided by the highest authority in the state, and by Chancellor Kent in the case last referred to.

I am, therefore, of opinion that the statute of limitations which is relied on, in the answers of both of the defendants, is a bar to the relief sought by the bill.

With regard to the defendant McDonald, there is another defence relied upon, which is peculiar to courts of equity, and which, in my judgment, would effectually protect him from this claim, and that is founded upon the lapse of time, and the staleness of the demand. I say the defendant, McDonald, because he only relies upon it in his answer, though I do not mean to be understood as deciding that the defence founded upon lapse of time may not avail a party, who does not set it up in his answer.

The complainants here do not seek to recover the property itself, or to unsettle the title of the purchaser. Their object is to get at the purchase money, upon the principle that with respect to the surplus remaining in the hands of the defendant, after repaying their advances, they must be regarded as trustees for them. There is certainly nothing in this case which can give it the character of a direct trust. If it be a trust at all, it is one by construction only, and the cases are full to the effect that constructive trusts will not be permitted to be made out at any distance of time, after the facts and circumstances happened, out of which they arise, as was said by Sir William Grant, in *17 Vez.*, 97, "there was no ground for a doctrine so fatal to the security of property as that would be," so far from it, that not only in circumstances where the length of time would make it difficult to ascertain the true state of the facts, but where they could easily be ascertained, and where it is perfectly clear that